XI-HC—78

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr.A.No. 1284/2003
Cr.A.No. 1296/2002

मामला क्रमांक ..... Cr.A No. 804/2003 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO. 1284/2003

APPELLANT — Anand Ram son of Usat Ram Rawat, aged about 45 years, resident of village Saramdega, P.S. Lailunga, Distt. Raigarh (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, through Police Station Lailunga, Distt. Raigarh (C.G.)

CRIMINAL APPEAL NO. 1296/2002

APPELLANTS — 1 Amritlal Rawat, son of Anandram Rawat, aged about 26 years
2 Lohersai Rawat, son of Dhaniram Rawat, aged about 30 years
3 Ramsai Rawat, son of Dhaniram Rawat, aged 26 years

All residents of village Saramdega, P.S. Lailunga, Distt. Raigarh (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, through Police Station Lailunga, Distt. Raigarh (C.G.)

CRIMINAL APPEAL No. 804/2003

APPELLANT — Chinta Mani Rawat, aged about 32 years, Son of Kedarnath Rawat, R/o. village Sarmadega, P.S. Lailunga, Distt. Raigarh (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, through Police Station Lailunga, Distt. Raigarh (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

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आदेश पत्रक (पूर्वानुबद्ध)

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4-4-2007

Shri Ramkumar Tiwari, Advocate for appellant Anandram.

Sushri Usha Chandrakar, Advocate for appellant Chintamani Rawat.

Smt. Indira Tripathi, Advocate for appellants Amritlal Rawat, Lohersai Rawat and Ramsai Rawat.

Shri Sudhir Bajpai, Dy. Govt. Advocate, for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

Criminal Appeal No. 1284/2003 filed by Anand Ram, Criminal Appeal No. 804/2003 filed by Chintamani Rawat and Criminal Appeal No. 1296/2002 filed by Amritlal Rawat, Lohersai Rawat and Ramsai Rawat are being disposed of by this common judgment as all these appeals are arising out of same judgment dated 4-12-2002 passed by Special Judge, Raigarh in Special Case No. 18/2001.

These appeals are directed against the judgment of conviction and order of sentence dated 4-12-2002 passed by Special Judge, Raigarh in Special Case No. 18/2001 whereby learned Special Judge after holding the accused appellants guilty for commission of offence under Section 302 read with Section 149 of I.P.C and accused Anandram, Chintaram, Amritlal Rawat and Lohersai guilty for offence under Section 148 of I.P.C. whereas accused-appellant Ramsai guilty for offence under Section 147 of I.P.C., sentenced each of the accused-appellant to undergo imprisonment for life and to pay a fine of Rs. 2,000/- and in default of payment of fine, to further undergo imprisonment for 6 months for offence under Section 302 read with Section 149 of I.P.C., accused Anandram, Chintamani, Amritlal and Lohersai have been sentenced to undergo one year's R.I. under

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आदेश पत्रक (पूर्वानुबद्ध)

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Section 148 of I.P.C. and accused Ramsai has also been sentenced to undergo one year's R.I. under Section 147 of I.P.C. respectively.

Case of the prosecution, in brief, is that P.W. 1 Membai lodged First Information Report Ex. P-1 in Police Station Lailunga with the allegation that on Friday 16-7-1999 at about 2.00 p.m. on coming to know that their crop standing in Pakdhoda forest is being damaged by animals, her husband Dhirau, Anamo and Bhagwano left for the agricultural field. She also followed them. When they reached to the filed, they saw that there were no animals in the field. Therefore her husband, brother-in-law and she were returning to their house. By the time they reached to the last corner of the field, all of a sudden Anandram, Chintaram, Lohersai, Ramsai and Amrit came carrying club, spear, axe with common object to murder her husband. Loharsai, Ramsai and Amrit threw the weapons they were carrying and caught hold of her husband and threw him on the ground. Chintamani and Anandram started assaulting her husband with axe. She tried to intervene but they did not stop. Her husband could not rise and succumbed to the injuries spontaneously. Receiving this report, Station House Officer, Police Station Lailunga registered offence under Sections 147, 148 and 302 of I.P.C., left for the scene of occurrence. Site plan Ex. P-2 of the place of occurrence was prepared by Head Constable Bansidhar Sidar. After giving notice Ex. P-3, inquest on the body of Dhirau Ex. P-4 was prepared by the Investigating Officer. Body of Dhirau was sent for post mortem examination to Primary Health Centre, Lailunga where Dr. S. Upadhyay (P.W. 9) conducted post mortem and opined that cause of death was coma due to extradural haemorrhage and injury of head, death was homicidal. Post mortem report is Ex. P-23. Based on memorandum Ex. P-5 given by Ramsai, Ex. P-6 given by Anandram, Ex. P-7 given by Chintamani, Ex.P-8 given by Amrit Lal, Ex. P-9 given by Lohersai, under Ex. P-10 one axe was

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seized at the instance of Lohersai, under Ex. P-11 one Lungi of Lohersai was seized, under Ex. P-12 plain soil and blood stained soil was seized, under Ex. P-13 one club at the instance of Ramsai was seized, one Lungi of Ramsai was seized under Ex. P-14, one axe was seized under Ex. P-15 at the instance of Anandram, one Dhoti of Anandram was seized under Ex. P-16, one spear was seized under Ex. P-17 at the instance of Chintamani, one Lungi was seized under Ex. P-18, bow and arrow was seized at the instance of Amritlal under Ex. P-19, one towel under Ex. P-20 was seized at the instance of Amritlal. The axe was sent for opinion of Assistant Surgeon under Ex. P-24-A. Doctor gave opinion Ex. P-24 in which he mentioned that injury sustained by Dhirau can be caused by axe in question. Articles were sent for chemical examination to the Forensic Science Laboratory, Raipur from where report Ex. P-27 was received. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Raigarh against accused appellant as also Itwar and Daitari, who committed the case to the Sessions Judge who was also empowered as Special Judge.

The prosecution examined 13 witnesses at the trial in order to establish charges against the accused persons. Statement of accused persons were recorded under Section 313 of Cr.P.C. in which they denied the material appearing against them and stated that they have been falsely implicated in the crime on account of animosity between the parties for agricultural land.

Learned Special Judge after hearing counsel for the respective parties, acquitted accused Daitari and Itwar whereas convicted the accused appellants as aforementioned.

We have heard Shri Ramkumar Tiwari on behalf of Anandram, Smt. Indira Tripathi on behalf of Amritlal Rawat, Lohersai Rawat and Ramsai Rawat,

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आदेश पत्रक (पूर्वानुबद्ध)

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Sushri Usha Chandrakar on behalf of Chintamani Rawat, and Shri Bajpai on behalf of the State.

Homicidal death of Dhirau has not been disputed by counsel for the appellants. Moreover from the evidence of P.W. 9 Dr. S. Upadhyay who conducted post mortem on the body of Dhirau as also evidence of P.W. 1 Membai, P.W. 2 Anamo, it is established that death of Dhirau was homicidal in nature.

As far as involvement of accused appellants in crime in question is concerned, learned counsel for the accused appellants argued that there is improvement in the evidence of witnesses namely P.W. 1 Membai and P.W. 2 Anamo. Their evidence before the Court is contradictory to the statement under Section 161 of Cr.P.C. as also to the F.I.R. Ex. P-1 given by P.W. 1 Membai. They also argued that in this case, the material witness who is said to have intervened at the time of commission of crime namely Bhagwano amd who is brother of the deceased, has not been examined. They further argued that the incident is said to have happened at 3.00 p.m. on 16-7-1999 whereas report was lodged on 17-7-1999 at 3.00 p.m.

On the other hand Shri Bajpai supported the judgment of the trial court.

Having heard counsel for the respective parties, we have perused the evidence of P.W. 1 Membai, P.W. 2 Anamo, First Information Report Ex. P-1 and case diary statement of these witnesses Ex. D-1 and D-2. In the First Information Report Ex. P-1 lodged by P.W. 1 Membai, it has been mentioned that three accused persons namely Amritlal, Lohersai and Ramsai after throwing their weapons, they caught hold of Dharau, threw him on the ground whereas accused Anandram and Chintamani attacked Dhirau with axe and in case diary statement, it has been mentioned that only Anandram attacked the deceased with axe

G. ...00.

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आदेश पत्रक (पूर्वानुबद्ध)

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whereas in the Court evidence, Membai (P.W. 1) and Anamo have stated that in fact Chintamani attacked the deceased with axe which was given by Anandram to Chintamani. It is categorically mentioned that attack was not made by Anandram. Therefore, above are the serious contradictions between the court evidence, case diary statements and first information report and no explanation whatsoever has been offered by these witnesses of the prosecution. In the F.I.R. it has been stated that Anandram and Chintamani both attacked with axe whereas as per prosecution, Chintamani was carrying spear and there is no injury of spear on the body of Dhirau and at the time of investigation spear has been recovered at the instance of Chintamani. Therefore, the evidence of these two witnesses is not consistent in respect of the manner in which the incident started and Dhirau was attacked. Therefore, non-examination of Bhagwano, who was accompanying the deceased and was real brother of the deceased and who intervened when accused attacked deceased, creates doubt about the prosecution case. Conclusion of the above discussion is that the prosecution has suppressed the genesis of the crime in the light of the above contradictory statements and non-examination of Bhagwano. The delay in lodging F.I.R. is about 24 hours whereas as per F.I.R. the distance of police station from the place of occurrence is 35 km. It has also come on record that there was long animosity between the deceased party and accused party about agricultural land. Therefore, we are of the considered opinion that the prosecution has failed to adduce legal consistent evidence in order to prove the offence against the accused persons. Recovery witness of the seizure memo P.W. 5 Manbodh has also been declared hostile. Therefore, the accused persons are entitled for benefit of doubt.

For the foregoing reasons, conviction and sentence imposed upon the accused persons cannot be sustained. Appeal of the accused-appellants succeed

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	and they are acquitted of all the charges. It is stated that accused Chintamani is on bail. His bail bonds are discharged. He need not surrender. Accused Anandram, Amritlal Rawat, Lohersai Rawat and Ramsai Rawat be set at liberty forthwith if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**